

Critical Areas Act Memorandum

Land Stewardship Project members and staff met with Governor Mark Dayton about frac sand mining issues on Dec. 4, 2013, in Winona, Minn. At the meeting they reviewed with him the following memorandum, which explains how the Governor can use the Critical Areas Act to enact a moratorium on frac sand mining in southeast Minnesota for two years.



John R. Wells & Associates
Sustainability through land & water management

December 2, 2013

Mark Schultz, Associate Director
Land Stewardship Project
821 E. 35th Street #200
Minneapolis, MN 55407

RE: Using Executive Power of the Minnesota Critical Areas Act to Protect Southeast Minnesota from Potential Harm due to Frac Sand Development

Dear Mark:

The bluff land and karst geology of Southeast Minnesota's Driftless Area are among the state's most unique assets and I'd like to think that Minnesotans would do everything in their power to protect them. It is with this thought in mind that I call your attention to a little known, but potentially very powerful Minnesota law, the Minnesota Critical Areas Act of 1973.

This law gives Minnesota and its communities a flexible framework within which they can:

- Think collectively about a region's needs
- Respond to a region's looming threats
- Build partnerships that cut across local boundaries
- Design their own unique program or "package of protections"
- Stop development that threatens what is special about a region

The law, in fact, empowers communities to safeguard a special regional resource or amenity that cannot be protected by conventional means—clearly the case with frac sand development in the Southeast.

The policy the Legislature expressed 40 years ago rings as true today as then:

The legislature finds that the development of certain areas of the state possessing important historic, cultural, or esthetic values, or natural systems which perform functions of greater than local significance, could result in irreversible damage to these resources, decrease their value and utility for public purposes, or unreasonably endanger life and property. The legislature therefore determines that the state should identify these areas of critical concern and assist and cooperate with local units of government in the preparation of plans and regulations for the wise use of these areas. (Minnesota Statutes, Section 116G.02)

Few would argue with the notion that Southeast Minnesota's communities possess *important historic, cultural and aesthetic values*, and *natural systems of greater than local significance*. And, today we know that frac sand mining would put the region and its historic, cultural, aesthetic and natural resources at risk.

This is why I believe you should ask Governor Dayton to bring the Critical Areas Act back to center stage. The Governor can do this by asking the Environmental Quality Board to take the steps prescribed by Minnesota Statutes, Section 116G.06. In conjunction with affected communities, EQB would:

- Evaluate the risk that frac sand mining poses to Southeast Minnesota;
- Identify those areas that should be designated collectively as an area of critical concern to address this risk, and specify the area's boundaries;
- State the reasons why the area is of critical concern and spell out the dangers that would result from uncontrolled or inappropriate development;
- Describe the advantages that would be achieved by development of the area in a coordinated manner;
- Develop specific principles and standards to guide local plans and ordinances for managing development of the area; and,
- Recommend a moratorium on frac sand mining at least until local plans and ordinances have been put into place.

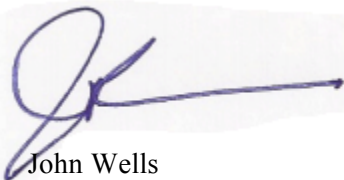
The Governor would then review EQB's recommendations and the program it suggests in cooperation with affected communities. He would be free, of course, to discard any part he does not like, which would allow him the time to ensure the designation has the support of the communities it is intended to protect, and that carrying it out will, in fact, protect those communities.

Once Governor Dayton decides what his Critical Area package will look like, his next step would be to sign an executive order designating a Southeast Minnesota Area of Critical Concern. Once the Governor designates the critical area, his moratorium on frac sand mining – if he chooses to make that part of the order – goes into effect immediately. No additional legislative authority is required. In addition, EQB would begin to advise and assist the region's communities, as well as state agencies, in developing coordinated plans to protect the region. Minnesota Statutes, Section 116G.07 provides six months for local governments to complete those plans. While many might consider the short timeframe unreasonable, EQB is empowered to extend the deadlines. In addition, as it did with the Mississippi River Corridor Critical Area, the Legislature could aid communities by providing funds through EQB for planning.

It is important to understand that the Legislature intended the process to move quickly. It was not intended to take "forever" to put plans and protections in place. That's also made clear by the statutory duration of the order, which by law lasts for three years. The Governor can extend the order at that point and the Legislature may even make the designation permanent. In any case, the beauty of the Act is that it provides a path for all the necessary partners to come together and address the root causes of a threat, as well as protect the features most at the heart of a community and a region's well being.

As you know, I had the honor of working for EQB for nearly 30 years and serving as its Strategic Planning Director for 25 of those years. That's why I'm confident that, with Governor Dayton's support and LSP's help, the board can build a protection framework Southeast Minnesota communities will embrace and that will keep frac sand mining from compromising the region's water, natural resources, farmland, history and aesthetics.

Good luck in your discussions with the Governor. And please let me know if I can be of any help as this moves forward. Thank you!



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